

TO: All Assessing Officers  
FROM: Emil Tahvone, Administrator  
State Tax Commission

Bulletin No. 1 - January 14, 1983  
County Taxes  
Voted Increases

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

COUNTIES: Boards of commissioners--spreading  
tax levy within tax rate limitation  
increase voted after September 15

ELECTIONS: Time of election to vote on an  
increase in tax rate limitation

While a county tax rate limitation increase election may be held after September 15, 1982, a county board of commissioners is without authority to spread taxes for inclusion in the 1982 tax bills within any increase in the tax rate limitation voted by the county electors at an election held after September 15 of that year.

Opinion No. 6105

November 5, 1982

Honorable Don Koivisto  
State Representative  
Roosevelt Building  
Lansing, Michigan 48909

You advise that an election was held in Iron County on August 10, 1982, and the county electors approved a proposal to increase the tax rate limitation for three years, for the purpose of funding the operating expenses of the Iron County Medical Care Facility. The ballot proposal stated:

"Shall the Tax Rate Limitation for the County of Iron be increased one and one-half mills for a period of three (3) years, 1983-1985 inclusive, the taxes so raised to be used exclusively for the operation of the Iron County Medical Care Facility?"

You state that in order to obtain the intended tax revenue for the 1983 operations of the Medical Care Facility, the ballot should have read "for the years 1982-1984 inclusive," thus allowing the taxes to be spread within the increase in the tax rate limitation

approved by the electors on the 1982 tax bills to be distributed in December, 1982. You further advise that another Iron County increase in tax rate limitation election has been scheduled for December 7, 1982, for the electors' approval of the spreading of the levy within the increased tax rate limitation in 1982.

You request my opinion upon the following questions:

"1) May the Board levy the voter approved 1.5 mills on the 1982 tax bills considering the language of the ballot question?

"2) May the Board hold a millage election on or before December 10, 1982 for levy in 1982?"

The ballot question approved on August 10, 1982, is phrased in such a way that it contemplates an increase in the county's tax rate limitation for tax years 1983-1985, rather than specifying an increase in 1982-1984, the revenue of which was to be used for the 1983-1985 operating expenses of the facility. The county's electors have approved an increase in the limitation to be levied and collected beginning in 1983. The approved increase in the tax rate limitation does not authorize the spreading of such tax in 1982. OAG, 1965-1966, No 4463, p 207 (February 21, 1966), concluded:

"In Michigan taxes are levied for a calendar year and are collected for the calendar year in which the levy is made. Pere Marquette Railroad Co v Kalamazoo, Lake Shore & Chicago Railway Co., 158 Mich. 40. It follows that the taxes assessed and levied on real property in 1966 are the taxes for the calendar year 1966."

See also, OAG, 1979-1980, No 5749, p 901 (July 31, 1980); 1 OAG, 1955, No 2074, p 257 (May 11, 1955); OAG, 1952-1954, No 1850, p 443 (November 15, 1954); OAG, 1949-1950, No 940, p 191 (April 6, 1949); OAG, 1943-1944, No 0-425, p 331 (March 26, 1943); and OAG, 1926-1928, p 623 (February 5, 1928). In 1 OAG, 1955, No 2074, supra, the question presented was whether county real property taxes due in December, 1954, were taxes for the year 1954, or whether such taxes were payable in advance for the year 1955 and it was concluded:

"The fact that the amount of the levy is in general dependent upon the needs of the governmental unit in question for the succeeding year does not change the fact that the same are taxes for the year in which they are levied. [Citing Pere Marquette, supra.]

"Such reasoning is equally applicable to county taxes. The fiscal year of the county is the calendar year...The fact that the proceeds of the county taxes for the year 1954 are used to defray the expenses of the county government during the year 1955 is immaterial."

It is my opinion, therefore, that the Iron County Board of Commissioners may not levy 1.5 mills on the 1982 tax bills, in light of the language of the ballot question approved by the county electors on August 10, 1982.

Your second question inquires whether a tax rate limitation increase election may be held by the county on or before December 10, 1982, for spreading of the tax levy within such increase in 1982, one such having been scheduled for December 7, 1982. Answer to your question appears in 1893 PA 206, § 36; MCLA 211.36; MSA 7.54, as amended by 1982 PA 225, effective September 16, 1982, which provides:

"(1) The township clerk of each township, on or before September 15 of each year, shall make and deliver to the supervisor of the clerk's township, a certified copy of all statements and certificates on file, and of all records of any vote or resolution in the clerk's office authorizing or directing money to be raised in the township by taxation for township, school, highway, drain, and all other purposes, together with a statement of the aggregate amount thereof. The supervisor shall deliver the certified copies to the clerk of the county before October 2. The clerk shall present the copies to the county board of commissioners at its annual meeting and file the copies in the clerk's office. The county board of commissioners shall not levy in the year voted a tax levy voted on or after September 15. This subsection does not apply where subsection (2) applies.

"(2) The amount of taxes which are to be levied for school purposes in a school district or an intermediate school district which holds a millage election or an election on a question submitted pursuant to section 34d(11), on or before December 10, 1982, or the amount of taxes which are to be levied by a township which holds a millage election on or before November 2, 1982, and which are approved, shall be certified for the calendar year of 1982. On the day after the millage is certified pursuant to this subsection, the appropriate county board of commissioners shall meet and direct or amend its direction for the spread of millages by local units in the county in accordance with the certification or amended certification.

"(3) The reasonable and actual expenses incurred by a township, county, or city in assessing and collecting the school taxes levied and spread pursuant to an election under subsection (2) which is held after October 15, to the extent these expenses are in addition to the expense of collection and assessing any other taxes at the same time and exceed the amount of any fees imposed for the collection of these taxes, shall be billed to and paid by the school district or an intermediate school district." [Emphasis added.]

The pertinent language of 1893 PA 206, § 36(1), supra, states:

"The county board of commissioners shall not levy in the year voted a tax levy voted on or after September 15."

This provision clearly precludes a county board of commissioners from levying a tax in 1982, when the levy is within a tax limitation increase voted upon in 1982 after September 15.

Noting that 1893 PA 206, § 36(1), supra, does not apply where subsection (2) applies, it may be inquired whether the deadline election date of December 10, 1982, specified in subsection (2) may be applied to a county tax levy, permitting a county tax rate limitation increase election subsequent to September 15, 1982, notwithstanding the expressed prohibition in subsection (1).<sup>1</sup>

1893 PA 206, § 36, supra, subsection (2), as amended by 1982 PA 225, refers to "taxes...levied for school purposes in a school district or intermediate school district which holds a millage election, or an election on a question submitted pursuant to section 34d(11)<sup>2</sup> on or before December 10, 1982." [Emphasis added.] A school district or intermediate school district may, on or before December 10, 1982, hold a tax rate limitation increase election, or alternatively an election pursuant to 1893 PA 206, § 34d(11), for school purposes. The clause "or an election...pursuant to section 34d(11),"<sup>3</sup> has as its antecedent the terms "a school district or intermediate school district." This clause describes one of two types of elections which may alternatively be held by a school district or an intermediate school district for taxes for school purposes. There is no other antecedent in section 36(2) to which this clause can refer (such as a county), and the clause may not be given meaning independent of the expressed antecedent, which is confined to taxes for school purposes in school districts or intermediate school districts.

The fact that the December 10, 1982, deadline election date, for levy in 1982, is confined by section 36(2) to school districts and intermediate school districts, is further reflected in section 36(3):

"Expenses incurred...in assessing and collecting the school taxes levied and spread pursuant to an election under subsection (2)...shall be billed to and paid by the school district or intermediate school district." [Emphasis added.]


An interpretation including a county in section 36(2), as a unit of government permitted tax rate limitation increase elections up to December 10, 1982, for levy in 1982, would result in an expressed prohibition being removed by implication; would ignore the fact that the December 10, 1982, date is confined to millage elections for school purposes, and; would engraft upon section 36(2) another unit of government, when the legislature had enumerated only school districts and intermediate school districts. Application of the maxim expressio unius est exclusio alterius<sup>4</sup> would preclude such an interpretation.

The legislative history of 1893 PA 206, § 36, supra,<sup>5</sup> reflects the legislature's intention that a county board of commissioners be precluded, without exception, from spreading a tax levy within a tax rate limitation in the same year the increase is voted upon by county electors, when such election is held after September 15 in that year. The prohibition appears in all amendments of section 36. Exceptions permitting later elections, and levys in the same year, for school districts have been included beginning with amendatory 1973 PA 135, always with reference to tax rate limitation increase elections on tax levies for school purposes. The exception was broadened in amendatory 1982 PA 225 to include

intermediate school districts, and townships, but still does not expressly or impliedly include counties. While the section 34d(11) type of tax rate limitation increase election was added by amendatory 1979 PA 116 to permit voter approval of tax rates in excess of the rate required by any rollback of property tax rates pursuant to Const 1963, art 9, § 31, it is clear that a section 34d(11) tax rate limitation increase election is permitted as an alternative under section 36(2) only with respect to elections on tax levies for school purposes. The reference, in section 36(2), to section 34d(11) only adds another type of election belatedly permitted for school tax rate limitation increase purposes; it does not permit the addition (by implication) of counties as a unit of government authorized to hold belated tax rate limitation increase elections, for levy in the same year, independent of the school purpose requirement.

Although counties are generally authorized to hold tax rate limitation increase elections pursuant to the property tax limitation act, 1933 PA 62, § 3; MCLA 211.203; MSA 7.63, counties are, nonetheless, limited by 1893 PA 206, § 36, supra, as to the time when taxes may be spread within the tax rate limitation increase approved by the electors at elections held after September 15.

It is my opinion, therefore, that while the Iron County Board of Commissioners may hold a tax rate limitation increase election after September 15, 1982, it would be precluded by 1893 PA 206, § 36, supra, from spreading a tax for inclusion on the 1982 tax bills within any tax rate limitation increase voted at such election. However, it is noted that the legislature may, by appropriate legislation, authorize the county board of commissioners to spread the levy of taxes within any tax rate limitation increase voted upon after September 15, 1982.

  
FRANK J. KELLEY  
Attorney General

#### FOOTNOTES

<sup>1</sup>Inasmuch as you have inquired about a December 10, 1982 election deadline for 1982 levies, it is unnecessary to discuss the November 2, 1982 millage election deadline authorized in townships by 1893 PA 206, § 36(2).

<sup>2</sup>1893 PA 206, § 34d, subsection (11); MCLA 211.34d; MSA 7.52(4), added by 1979 PA 35.

<sup>3</sup>Added to 1893 PA 206, § 36(2), by 1979 PA 116.

<sup>4</sup>"Where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions." Chesapeake & O R Co v Public Service Commission, 59 Mich App 88, 100; 228 NW2d 804 (1975), leave denied 394 Mich 818 (1975).

<sup>5</sup>See 1960 PA 57; 1973 PA 135; 1974 PA 257; 1975 PA 202; 1976 PA 221; 1977 PA 80; 1977 PA 166; 1978 PA 408; 1978 PA 532; 1979 PA 116; 1980 PA 226; and 1982 PA 225.